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12 **UNITED STATES BANKRUPTCY COURT**  
13 **DISTRICT OF NEVADA**

14 In re:

15 USA COMMERCIAL MORTGAGE  
16 COMPANY,

17 USA CAPITAL REALTY ADVISORS,  
18 LLC,<sup>1</sup>

19 USA CAPITAL DIVERSIFIED TRUST  
20 DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED  
FUND, LLC,<sup>2</sup>

USA SECURITIES, LLC,<sup>3</sup>

Debtors.

Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

Case No. BK-S-06-10725-LBR<sup>1</sup>  
Case No. BK-S-06-10726-LBR<sup>1</sup>  
Case No. BK-S-06-10727-LBR<sup>2</sup>  
Case No. BK-S-06-10728-LBR<sup>2</sup>  
Case No. BK-S-06-10729-LBR<sup>3</sup>

**CHAPTER 11**

Jointly Administered Under Case No.  
BK-S-06-10725 LBR

**THIRD OMNIBUS OBJECTION OF  
USACM TRUST TO PROOFS OF  
CLAIM BASED ENTIRELY UPON  
INVESTMENT IN THE OAK  
SHORES II LOAN**

Date of Hearing: May 9, 2011

Time of Hearing: 2:00 p.m.

Estimated Time for hearing: 10 minutes

The USACM Liquidating Trust (the “USACM Trust”) moves this Court, pursuant to § 502 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an order disallowing the Proofs of Claim listed in **Exhibit A**. These claims were filed by

<sup>1</sup> This bankruptcy case was closed on September 23, 2008.

<sup>2</sup> This bankruptcy case was closed on October 12, 2007.

<sup>3</sup> This bankruptcy case was closed on December 21, 2007.

1 investors (“Direct Lenders”) against USA Commercial Mortgage Company (“USACM”)  
2 based upon an investment in a loan to John E. King and Carole D. King (collectively, the  
3 “Borrower”) (the “Oak Shores II Loan”). This Objection is supported by the Court’s  
4 record and the Declarations of Geoffrey L. Berman and Edward M. Burr in Support of  
5 Omnibus Objections to Proofs of Claim Based Upon the Investment in the Oak Shores II  
6 Loan. (the “Berman Decl.” and “Burr Decl.”).

7 THIS OBJECTION DOES NOT RELATE TO AND WILL NOT IMPACT THE  
8 DIRECT LENDERS’ RIGHTS TO REPAYMENT ON THE OAK SHORES II LOAN  
9 OR TO SHARE IN ANY PROCEEDS GENERATED FROM THE SALE OF THE  
10 REAL PROPERTY SECURING THE OAK SHORES II LOAN.

## 11 MEMORANDUM OF POINTS AND AUTHORITIES

### 12 I. BACKGROUND FACTS

#### 13 a. The USACM Bankruptcy

14 On April 13, 2006 (“Petition Date”), USACM filed a voluntary petition for relief  
15 under chapter 11 of the Bankruptcy Code. Debtor continued to operate its business as  
16 debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.  
17 Debtor’s post-petition management of the Debtor was under the direction of Thomas J.  
18 Allison of Mesirov Financial Interim Management, LLC, who served as the Chief  
19 Restructuring Officer.

20 USACM was a Nevada corporation that, prior to the Petition Date, was in the  
21 business of underwriting, originating, brokering, funding and servicing commercial loans  
22 primarily secured by real estate, both on behalf of investors and in limited instances for its  
23 own account. That business included the solicitation of investors to purchase fractional  
24 interest in loans that USACM originated and then serviced. These investors are referred to  
25 as “Direct Lenders” in USACM’s bankruptcy case and in this Objection.

1       On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third  
2 Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No.  
3 2376]. As part of the Plan, and pursuant to an Asset Purchase Agreement filed with this  
4 Court, USACM sold the servicing rights to most of the loans it serviced to Compass  
5 Partners, LLC and Compass Financial Partners, LLC (“Compass”), including the Oak  
6 Shores II Loan. The sale to Compass closed on February 16, 2007.

7       The USACM Trust exists as of the Effective Date of the Plan, which was March 12,  
8 2007. Geoffrey L. Berman is the Trustee. Under the Plan, the USACM Trust is the  
9 successor to USACM with respect to standing to seek allowance and disallowance of  
10 Claims under 11 U.S.C. § 502(a).

11       Upon information derived in part from filings in the United States District Court,  
12 District of Nevada, *3685 San Fernando Lenders Company, LLC, et al v. Compass USA*  
13 *SPE, LLC, et al*, No. 2:07-cv-00892-RCJ-GWF action, the Trust believes that “Silar  
14 Advisors, LP (“Silar”) financed Compass’ acquisition of the Purchased Assets, including  
15 the loan service agreements in the USACM bankruptcy case and took a secured interest in  
16 those Purchased Assets by executing a Master Repurchase Agreement (“Repurchase  
17 Agreement”) with Compass, and by filing a UCC-1 financing statement with the State of  
18 Delaware.” *Id.* Docket 1250 at 13-14 (citations to declarations omitted).

19       Further, the Trust believes that “Effective as of September 26, 2007, Silar  
20 foreclosed on Compass’ interest through Asset Resolution LLC (“Asset Resolution”) and  
21 took ownership of the Purchased Assets. ... Silar created Asset Resolution as a ‘single  
22 purpose entity,’ conveyed all of its interests in the Repurchase Agreement to Asset  
23 Resolution, and Asset Resolution foreclosed on the assets of Compass, including the  
24 Purchased Assets.” (Citations omitted.) Asset Resolution LLC is now a debtor in a  
25 chapter 7 bankruptcy case pending in Nevada, case no. BK-S-09-32824-RCJ, along with  
26

1 certain affiliates.<sup>4</sup> William A. Leonard, Jr. was appointed trustee in the Asset Resolution  
2 case.

3 The Trust has attempted to monitor loan collections through monitoring the district  
4 court litigation and the Asset Resolution bankruptcy case, but has received limited  
5 information concerning servicing and resolution of direct loans by Compass/Silar/Asset  
6 Resolution or their successors, including the trustee in bankruptcy for Asset Resolution.  
7 The following is the extent of the USACM Trust's information on current services for the  
8 Oak Shores II Loan.

9 By Order entered on June 24, 2010 by the Hon. Robert C. Jones in United States  
10 Bankruptcy Court (Case No. BK-S-09-32824-RCJ), the servicing rights for 19 loans were  
11 transferred to Cross, FLS. The Oak Shores II Loan servicing rights were transferred to  
12 Cross, FLS by that Order. The Trust has been in contact with Cross, FLS with regard to  
13 the status of the Oak Shores Loan.

14 **b. The Oak Shores II Loan**

15 In or around November 2005, USACM circulated an Offer Sheet to prospective  
16 Direct Lenders soliciting funding for an acquisition and development loan to a borrower  
17 identified as "John and Carol King" for a project generally known as Oak Shores II, which  
18 consists of 343 lots near Paso Robles, California. A copy of the undated Offer Sheet is  
19 attached hereto as **Exhibit B** and incorporated by this reference. (Berman Decl., ¶ 4.) The  
20 total loan amount proposed was \$15,150,000. The loan proceeds were to be used by  
21 Borrower to develop the real property and construct certain infrastructure improvements  
22 required for the development of single family residence. The Offer Sheet described the  
23 investment as a "First Trust Deed Investment" and noted that the investment would be

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<sup>4</sup> 10 90 SPE LLC, Fiesta Stoneridge LLC, CFP Gramercy SPE LLC, Bundy 2.5 Million SPE LLC, CFP  
26 Cornman Toltec SPE LLC, Bundy Five Million LLC, Fox Hills SPE LLC, HFAH Monaco SPE LLC,  
Huntsville SPE LLC, Lake Helen Partners SPE LLC, Ocean Atlantic SPE LLC, CFP, Gess SPE LLC, CFP  
Anchor B SPE LLC, and Shamrock SPE LLC.

1 secured by a first deed of trust on approximately 400 acres of land in San Luis Obispo  
2 County on Lake Nacimiento. The Offer Sheet indicated that the loan would be repaid  
3 from the sale of lots to individual buyers and from a bulk sale at final map to a third party.  
4 The Offer Sheet also stated there would be a loan to value ratio of approximately 60%  
5 based on an appraisal prepared by Ryon Associates. The Ryon Associates appraisal  
6 estimates the bulk value of the property to be \$25,300,000 as of March 7, 2005.

7 On June 6, 2005, Borrower made and delivered to various lenders, including the  
8 Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by Deed of Trust”  
9 (the “Note”) and a Construction Loan Agreement (Berman Decl., ¶5.) The Note and Loan  
10 Agreement provided for a loan in the initial principal amount of \$7,725,000. Pursuant to  
11 subsequent amendments to the Note and Loan Agreement, and as expressly permitted by  
12 the Loan Agreement, the amount of the loan was eventually increased to \$15,150,00. The  
13 Note was secured by a Deed of Trust, Assignment of Rents, Security Agreement and  
14 Fixture Filing (the “Deed of Trust”) that was recorded in the official records of San Luis  
15 Obispo County, California on July 1, 2005. (Berman Decl., ¶ 5.) Subsequent loan  
16 advances were secured by amendments to the Deed of Trust, and were likewise recorded  
17 in the official records of San Luis Obispo County.

18 According to information provided to the undersigned counsel, pursuant to its  
19 terms, the note was scheduled to mature twelve months after the loan documents needed to  
20 close were deposited with the title company. According to the USACM “Loan Summary”  
21 filed in this case, the loan was non-performing as of July 31, 2006. According to Cross,  
22 FLS, the loan remains non-performing, no amounts have been collected from the Borrower  
23 since Cross, FLS took over servicing of the Oak Shores II Loan, and the collateral  
24 securing the Oak Shores II Loan has not been sold.

25 According to USACM’s business records, during this bankruptcy case through the  
26 transfer of servicing to Compass, USACM treated the Direct Lenders with respect to any

1 interim payments by the borrower in accordance with this Court's orders and the  
2 confirmed Plan.

3 **c. Lenders' Claims On The Oak Shores II Loan.**

4 **Exhibit A**, attached, lists Proofs of Claim filed by Direct Lenders that appear to be  
5 based upon an investment in the Oak Shores II Loan. (Burr Decl. ¶ 7.) **Exhibit A**  
6 identifies the Proof of Claim number, the claimant, the claimant's address, the total  
7 amount of the claim and the total amount of the claim that appears to be related to an  
8 investment in the Oak Shores II Loan based upon the information provided by the  
9 claimant. (Burr Declaration ¶ 7.) The claims listed in **Exhibit A** are referred to  
10 hereafter as the "Oak Shores II Claims." As required by Nevada LR 3007, a copy of the  
11 first page of the proof of claim for each of the above-referenced claims are attached as  
12 **Exhibit C.**

13 **II. JURISDICTION**

14 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and  
15 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
16 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

17 The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and  
18 Bankruptcy Rule 3007.

19 **III. APPLICABLE AUTHORITY**

20 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed  
21 will be allowed unless a party in interest objects. If a party in interest objects to the proof  
22 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and  
23 shall allow the Claim except to the extent that the Claim is "unenforceable against the  
24 debtor . . . under any . . . applicable law for a reason other than because such claim is  
25 contingent or unmatured." 11 U.S.C. § 502(b). A properly filed proof of claim is  
26 presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof

1 of claim controverts the presumption, the creditor ultimately bears the burden of  
2 persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated*  
3 *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P.  
4 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

5 **IV. THE OBJECTION**

6 The Oak Shores II Loan appears to have been a legitimate, arms-length transaction,  
7 with a third party borrower. The Direct Lenders took a known risk by investing in a  
8 promissory note secured by liens on real property.

9 The Direct Lenders listed in **Exhibit A** fail to state a claim based upon the Oak  
10 Shores II Loan because USACM did not guarantee the Direct Lenders' investment in the  
11 Oak Shores II Loan.

12 USACM is not liable for the Borrower's default or any decrease in the value of the  
13 collateral.

14 The Direct Lenders fail to state a claim because USACM does not appear to have  
15 breached the loan servicing agreements with respect to collection of the Oak Shores II  
16 Loan. USACM was under no duty to foreclose on the collateral securing the Oak Shores  
17 II Loan or take any other action.

18 This objection will not affect the Direct Lenders' right to be repaid on the Oak  
19 Shores II Loan by the Borrower, or to recover from the sale of any collateral that secured  
20 the Oak Shores II Loan.

21 **V. CONCLUSION**

22 The USACM Trust respectfully requests that the Court disallow the claims against  
23 USACM listed in **Exhibit A** in full because those claims are based entirely upon an  
24 investment in the Oak Shores II Loan. This objection concerns only the Oak Shores II  
25 Loan and not any other claims of any of the Direct Lenders. The USACM Trust also  
26 requests such other and further relief as is just and proper.

1 Dated: April 11, 2011.

2 LEWIS AND ROCA LLP

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10 *Attorneys for the USACM Liquidating Trust*

11 Copy of the foregoing and pertinent  
12 portion of Exhibits mailed by first  
13 class postage prepaid U.S. Mail on  
14 April 11, 2011 to all parties listed on  
15 Exhibit A attached.

16 LEWIS AND ROCA LLP

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18 s/ Marie H. Mancino

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